

To:

1) ProFunds:

ProFunds,  
P.O. Box 182800,  
Columbus, OH 43218-2800

**Attention: John Hosty**

2) SEC:

U.S. Securities and Exchange Commission  
Office of Investor Education and Advocacy  
100 F Street, N.E.  
Washington, DC 20549-0213

**Reference: HO::~00388080::~HO**

**Attention: Rebecca Marquigny**

From:

SALIL V GANGAL  
3553 Sunnydays Ln,  
Santa Clara, CA, 95051

**Subject: Broker's intention of deliberate non-compliance with IRS Publication 550**

**SEC Ref: HO::~00388080~::HO**

Attention: (a) **Rebecca Marquigny** (of SEC)

(a) **John Hosty** (of Profunds)

Hello,

I, the undersigned, have a Regular Account at ProFunds. At the time of opening the account, I inquired with Profunds exactly how they comply with IRS Publication 550; Page 46; Point# 2. The relevant part of IRS Publication is given below:

**Specific share identification.** If you adequately identify the shares you sold, you can use the adjusted basis of those particular shares to figure your gain or loss.

You will adequately identify your mutual fund shares, even if you bought the shares in different lots at various prices and times, if you:

1. Specify to your broker or other agent the particular shares to be sold or transferred at the time of the sale or transfer, and
2. Receive confirmation in writing from your broker or other agent within a reasonable time of your specification of the particular shares sold or transferred.

Per the IRS publication, IRS allows identifying the shares that were bought at **(a)** Different Lots **(b)** Various Prices and **(c)** Various Times. Therefore, it is my responsibility to specify the (a), (b) and (c) to the broker. Using my specification it is broker's responsibility to identify the "specific" shares that I wish to sell, and after completing the sell, the broker must confirm in writing, in reasonable time "**my specification**" of shares sold.

So the sequence as described by IRS is:

- (1)** I specify the shares to be sold using (a) date of purchase of shares (b) price of purchase of shares (c) number of shares that were purchased.
- (2)** Broker identifies the "shares to be sold" using my specification.
- (3)** Broker sells the shares that were specified by me, and identified by broker, at the close of market.
- (4)** Broker sends written confirmation in a reasonable time that contains "my" specification.

I was given to understand by ProFunds that they provide written confirmation, in a reasonable time that has the “specification” used to “identify” the shares. I had a very long and contentious experience to get first such confirmation when I performed exchange using “specific share identification”. Ms Marquigny of SEC helped me with this. Unfortunately, the issue did not end. It continued as ProFunds subsequently informed me that they intend to stop complying with Publication 550.

On May 13, 2014, **John Hosty** of Profunds called me. He informed me that Profunds is willing to comply with Publication 550, only as long as written confirmations are not excessive. He indicated that after the amount of written confirmations get excessive, **Profunds will stop complying**. He declined to define what is “excessive” in spite of my request to him to define it. He asked me to write letter to make further inquiry, therefore I’m writing this letter.

#### **Here are my three requests to ProFunds:**

1. Please let me (and SEC) know if ProFunds is willing to comply with Publication 550; Page 46; Point #2, unconditionally, and 100% of the time. (Other brokers do this unconditionally, all the time.)
2. If ProFunds is not willing to comply, then please let me (and SEC) know **exactly when** ProFunds plans to stop complying? (Please define all the subjective terms e.g. “excessive”, when you put together your **plan of non-compliance**.)
3. I strongly urge you to comply fully, as I believe the law/regulation/code requires full compliance. I do not believe there is a provision to stop compliance when the documentation becomes “excessive”.

#### **Here are my two requests to SEC:**

1. Please look into this **questionable/vague compliance policy** of ProFunds. I believe that compliance should be 100%, and it should be 100% of the time. Compliance must not be merely when it suits the broker.
2. I request SEC to demand compliance from broker Profunds as they have declared intent to stop complying with Publication 550, when the documentation for compliance becomes “excessive”. I know that SEC is a **quasi-judicial** body, with sharp focus on enforcement. Therefore, I request SEC to demand compliance from broker ProFunds. I’m no lawyer, but I believe a **cease-and-desist** letter from SEC to broker ProFunds perhaps will be useful to halt their intention of non-compliance.

By-the-way other brokers (e.g. USAA, Vanguard, and Schwab) always send confirmations with my specification for identifying shares. I’ve attached **several** confirmations I got from other brokers. As you will notice, other brokers comply with Publication 550 **year after year** (highlighted different years in Pink). Confirmation from **Vanguard** mentions that they are doing this **in accordance with Internal Revenue Code** (highlighted in Orange), and they mention Publication 550 in their confirmation (highlighted in Orange).

Charles Schwab has done a great job with compliance in that they not only provide specifications for regular accounts but also for “**retirement**” accounts (highlighted in Blue).

It is quite perplexing to notice a broker like ProFunds that has declared intention to stop complying with IRS code, when others are in 100% compliance 100% of the times, and especially when this broker is completely aware of what the IRS Code is, and also knows fully well that **watchful regulator SEC** is already involved, and has taken interest in this matter.

Thanks.

\_\_\_\_\_ ( May 14, 2014 )

SALIL V GANGAL

Attachments:

- 1) USAA Confirmations: 3 confirmation on 3 sheets (Pink highlight)
- 2) Vanguard Confirmations: 2 confirmations on 4 sheets (Orange highlight)
- 3) Schwab Confirmation: 1 confirmation on 4 sheets (Blue highlight)